

ALLAMA IQBAL AND THE AUTHORITY TO INTERPRET SHARIAH IN A MODERN ISLAMIC STATE



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M.A.L.L.B. Ph.D.

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The Authority to Interpret
Shariah

In A Modern Islamic State

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PUBLISHERS, BOOKSELLERS & EXPORTERS

7, AIBAK ROAD (New Anarkali)

LAHORE-7 (PAK.)

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ISBN NO. 969-432-196-4

Reprinted 1991

Printed at Ashraf Printing Press, Lahore; and
Published by Sh. Shahzad Riaz for
Sh. Muhammad Ashraf, Publishers, Lahore.

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Introductory Remarks

Allama Iqbal possessed a multi-dimensional personality. And so are his views and thoughts. Only one facet of his many splendoured thoughts became predominant in the public mind i.e. the man who first conceived the "Idea" of Pakistan. This facet overcame and obscured other important facets of his thought. The poetry he wrote to give shape to his idea of Pakistan and to convert the idea into a movement, over-shadowed his other poetic and prosaic teachings about the life and the universe.

This was the natural and the historical demand of the Muslim Community of those times; his poems on this subject provided spiritual food to the subjugated Hindi Muslims, to give them fresh and healthy food for thought to move forward, to strive for independence, and this proved to be Manna for them. A Manna that the Great Thinker had proposed as an antidote for their slavish mentality of always treading the beaten path.

The fervour of Faith and the will to act in the vertical and horizontal directions that we saw during the Pakistan Movement were both the direct result of his rousing and inspiring poetry. It was this spirit that carried before it the military might of the British and the ancient intrigues of the Brahmans. There is no need to refer to all his poetry which inspired the weak to fight the strong. This is one facet of his personality and thought.

The other facet is concerned with the question:

"When the dream does materialize and the State comes into being, how to convert the energies of the movement into the channels of the construction of a State?

After having studied thoroughly his Persian and Urdu writings in poetry and prose: "Asrar-o-Rumooz", "Payam-e-Mashriq", "Zuboor-e-Ajam", "Javid Nama", "Pus-cheh-Bayid Kard", "Armughan-e-Hijaz" and his English writings especially: **"The Reconstruction of Religious Thought in Islam"**

I have come to the conclusion that, in fact, the major portion of his Thought is concerned with this question: the construction of a State according to the Islamic principles. And it consists of solid and creative Ideas.

The question naturally arises:

Why his views were never incorporated into the various constitutions that were framed in Pakistan?

Why his views on the organs of the State i.e. The Legislature, The Executive and The Judiciary were never taken into consideration?

Why were his thought on the shape of Social, Economic, Political, and Educational Institutions were ignored?

Why were the Scientific, Technical, Research and other institutions not based on his thought?

Do his writings not contain any teachings on these matters?

It is certainly not so.

In my estimation, a major portion of his writings consist of "Ijtihad" in respect of the construction of a Modern Islamic State and its institutions.

Then, the question arises why were these teachings ignored? To answer this question we have to consider many factors.

Firstly, his teachings about the "Movement of Pakistan" gained priority over his teachings on the constructions of a state because the Movement came first. Even during his life time, those of his couplets and lectures became part of our daily speech, that enhanced fervour in Faith and call to action against the forces of Disbelief, those that alluded to our Glorious Past and gave good tidings of a great future. Wherein were translated, in a beautiful fashion, the captivating Spirit of Islamic Teachings and Doctrines, as also the heartfelt feelings and aspirations of the Muslims.

Naturally, these beautiful and inspiring writings went straight to the hearts and minds of all sections of the Muslim Community.

The Muslims became so enamoured of and enraptured by these up lifting thoughts and became so absorbed in them that they could not pay due attention to his teachings regarding the construction of a Modern Islamic State.

They took the first part of his thought as the sum-total of his message.

The other factor is that his thought about the Pakistan Movement became part of the Syllabus of our education, and also, the Information Media busied themselves with the propagation of the first part of his teachings. This portion of his teachings was widely read and quoted in our social, cultural, and literary gatherings. So, even after the passage of half a century, his teachings regarding the shape and construction of a modern Islamic State could not attain to their rightful place in the scheme of things.

Taking advantage of this negligence, the "Manipulative Group" turned the attention of the public from his "Thought" to his "Grave".

The third factor is, that after the early demise of the Quaid-e-Azam Muhammad Ali Jinnah and Liaqat Ali Khan, soon after the birth of Pakistan, it became imperative for the succeeding political leadership to safeguard the interests of the Feudals, Capitalists and the Civil and Military Beaurocracy vis-a-vis the national objectives of Pakistan. Only that portion of his thought that served to further the ends of these classes was highlighted and his thoughts about the formation of a progressive modern Islamic State were suppressed. Therefore, for the purpose of use in the syllabi, information media, official, religious and cultural function, only the former portion was selected and the latter ignored. This arbitrary selection was subjected to such forceful repetition and such continuous exposure that the Nation was made to believe that, as if, Iqbal had abdicated from the rest of his views.

It was the duty of the Intellectual leadership of the country, that after the birth of Pakistan, they should have rearranged the priority in the matter of presenting the thought of Iqbal; his views about the matters of the State, Government dealings, and the formation of the social institutions, should have been given the highest priority. These should have formed part and parcel of the educational curriculum, brought to the fore in the information media and given usage in our social life.

In this article, I am going to deal with Iqbal's thought on only one of the aspects of a modern Islamic state i.e. the Legislature. This will give an idea of how much material there is in his writings on other matters pertaining to the formation of a modern Islamic state. These thoughts are inviting us to use them and thus make Pakistan into a modern Islamic state.

The quotations in this article are from his English work: "The Reconstruction of Religious Thought in Islam"

Form of Government

In a modern Islamic state, the question of "The Authority to interpret the Shariah" is directly linked to the form of Government.

According to Iqbal, the republican form of Government is absolutely in accord with the spirit of Islam. The authority to legislate, rightfully vests in an elected assembly. He holds that the Turkish Ijtihad to hand over the "Khilafat" (Caliphate) to the elected Assembly, is absolutely in accordance with the spirit of Islam. He writes:

"Personally I believe that the Turkish view is perfectly sound. It is hardly necessary to argue this point. The republican form of government is not only thoroughly consistent with the spirit of Islam, but has become a necessity in view of the new forces that are set free in the world of Islam" (p.157).

Interpretation of Shariah - Authority of the Parliament

The main function of an elected parliament of an Islamic state is the interpretation of the Shariah.

At the moment the most crucial question that is agitating the public mind is:

Who has the authority to interpret the Shariah?

Let us try and get some guidance on this issue from Iqbal's thought... he says:

"The transfer of the power of Ijtihad from the individual representatives of schools to a Muslim legislative assembly which, in view of the growth of opposing sects, is the only possible form Ijma can take in modern times, will

secure contribution to legal discussions from laymen who happen to possess a deep insight into affairs. 'In this way alone we can stir into activity the dormant spirit of life in our legal system, and give an evolutionary outlook." (p.174)

Why should the Parliament have the Authority to interpret Shariah

To this Iqbal has a forthright answer. According to him, the time has now come to take away the authority of Ijtihad from unelected representatives of the various sects and hand it over to the elected representatives of the people in the Parliament.

One of the reasons for doing this is that the various sects and schools of Fiqh are the product of the "Monarchal Period" of Muslim history, whilst now we have entered the democratic period.

After the death of the fourth rightly guided-Caliph, the authority to interpret the Shariah was, during the Umayyad and the Abbasid periods, taken away from the Ummah and given to various sects and schools of Fiqh, time has now come to restore the authority back to the people who are the real and legitimate owners of this right. They should exercise this authority through their elected representatives.

The other reason being, that in view of the growth of opposing and warring sects, this is the only possible form Ijma can take in modern times, will secure contributions to legal discussion from laymen who happen to possess a keen insight into affairs and without their participation, legislation becomes a lifeless-fruitless thing.

Iqbal's Ijtihad is precise and clear. According to him, the authority to the interpretation of Shariah vests only in the elected Parliament. He has two reasons for this inference: First, that the followers of different schools of

Fiqh are incompetent to perform Ijtihad, because the Shariah is one for the entire Muslim Community, whereas they represent the opposing and warring point of view of various sects. They may well interpret fiqh of their own sect but they are ineligible to interpret Shariah common to the entire Muslim Community. Secondly, the authority to interpret the Shariah is the right of the entire Ummah. God has not delegated this right to any person or any sect rather, He has bestowed it on the entire Ummah.

In his time the Holy Prophet (P.B.U.H), used to consult the people in the affairs of the state, dealings of the government, and in the formation of the social and economic institutions:

"Wa shawir-hum fil-amr" (3:159)

"(O Prophet) Consult them in the Affairs (of the State)"
was the command of God to the Holy Prophet.

And the same is meant by the verse:

"Wa amr-o-hum shoora baina-hum" (42:38)

"Their affairs (of state) are decided by mutual consultation"

And this was the policy of the Rightly-Guided-Caliphs (Khulafa-e- Rashideen). Many times, the opinion of ordinary men and women prevailed over the opinion of the Caliph and declared as the correct interpretation of the Shariah. The authority that God has bestowed on the Ummah regarding the interpretation of Shariah, can only be exercised in an atmosphere of complete political freedom and the practical shape to achieve this end would be that the Ummah should elect their representatives by means of a fair and impartial election and these should carry out the duty of the interpretation of the Shariah.

The Holy Prophet (P.B.U.H) has said:

"Allah shall never let my Ummah agree on Falsehood and Deviation from the way" (Tirmizi, Chap. Fitan, Luzoom-ul-Jama'at).

In the matter of the interpretation of the Shariah, one individual or a group may go astray but never the whole Ummah.

Eligibility of a Candidate

Everybody who has the competence to interpret the Shariah, is bearer of good character, and is an adult Muslim man or woman, is eligible to become the member of the legislative body. His competence may be judged by his ability to understand the teachings of the Quran and the Sunnah, knowledge of modern sciences and disciplines and of international and national problems. On the other hand those who exploit the national resources for their own selfish ends, or their religious position or regional or racial prejudices, are not eligible to be elected, because such exploitation is contrary to the teachings of the Quran and against Piety.

It is only a fiction that the door of Ijtihad is closed

Iqbal believes in continuous Ijtihad. He states by referring to Kazi Shawkani that Ijtihad was permitted even in the lifetime of the Holy Prophet (P.B.U.H). This categorically proves that Ijtihad cannot cease and become in-operative in any future time. Thus it is pure fiction that the door of Ijtihad is not open anymore. He states: "The closing of the door of Ijtihad is pure fiction" (p.178).

The cause of the fabrication of this fiction

Iqbal has stated three causes for the invention of this story about the door of Ijtihad being closed forever:

First *... ..*

The fiqh assumed a definite shape and it was then considered the last word and it was eternalized. .

"But contrary to the spirit of his own school the modern Hanafi legist has eternalized the interpretations of the founder or his immediate followers much in the same way as the early critics of Abu Hanifa eternalized the decisions given on concrete cases". (P.178)

The first man to show a powerful reaction to this attitude of the Fuqaha and the Fiqh being the last word was Imam Ibn-i-Taymiyya.

Iqbal writes:

"Claiming freedom of Ijtihad for himself he rose in revolt against the finality of the schools, and went back to the first principles in order to make a fresh start" (P,152)

He further writes:

"But with all their comprehensiveness, these systems are, after all, individual interpretations and as such, cannot claim finality. I know the Ulama of Islam claim finality for popular schools of Muhammadan Law, though they never found it possible to deny theoretical possibility of a complete Ijtihad". (P.168)

The second cause of the fiction about the door of Ijtihad being closed

that, due to mental laziness and spiritual decay, the great thinkers were turned into idols:

"And partly by intellectual laziness, which especially during the period of spiritual decay turns great thinkers into idols". (P.178)

The Third cause for the closure of the door of Ijtihad"

is said to be that the previous Mujtahideen had more facilities for performing Ijtihad, while the later writers had more difficulties in their way, Iqbal says, "It is non-sense".

Iqbal has vehemently rejected these three grounds for the closure of the door of Ijtihad. There is no religious or

scholarly sanction behind the idea of "The Finality of Fiqh". The utmost that can be said of Fiqh is that it is an individual's interpretation of the Shariah, that was done according to the prevailing circumstances of his period. There is no authority to establish the finality and eternity of Fiqh to declare it being the last word.

The founders of the schools of Fiqh themselves had no such claim i.e. that their Ijtihad was the final word. Iqbal asks the partisans of this view (that Fiqh is eternal):

"Did the founders of our schools ever claim finality for their reasonings and interpretations? Never." (P.168)

Turning the early Mujtahideen into idols does not mean that there exists any sanction in the Shariah for doing that rather, the underlying cause was the intellectual laziness and spiritual decay due to which the succeeding generations of the Fuqaha could not perform Ijtihad and hence led to the elevation of the early Mujtahideen to false pedestals.

Greater Opportunities Exist For Ijtihad, at Present

In reply to the third supposed cause of the closure of the door of Ijtihad, Iqbal has written that the claim was baseless and unreasonable (i.e. that the previous Mujtahideen had more facilities for Ijtihad and the present day Mujtahideen are faced with greater difficulties).

He called this "nonsense" and claimed that, in fact, the present day Mujtahideen had more facilities than the earlier ones and by quoting Sarakhsi, he says:

"If the upholders of this fiction mean that the later writers had more difficulties in their way, it is nonsense: for it does not require much understanding to see that Ijtihad for later doctors is easier than for the earlier ones. Indeed, the commentaries on the Quran and Sunnah have been compiled and multiplied to such an extent that the

Mujtahid of today has more material for interpretation than he needs". (P. 178)

Iqbal, by dint of his cogent arguments, proved the doctrine of the closure of the door of Ijtihad was a pure fiction and showed that the upholders of this view had no religious, scholarly and legal sanction for it. He insisted that the present day Muslims must resort to Ijtihad with complete confidence in its validity. They must resort to re-interpretation of Shariah, without any fear they have this right. And in no case, they should abandon it. He says:

"Modern Islam is not bound by the voluntary surrender of intellectual independence". (P. 178)

Iqbal proved the legitimacy of the right of the modern generations of the Muslims who are more illuminated by modern knowledge to re-interpret the Shariah he writes:

"The claim of the present generation of Muslim liberals to reinterpret the fundamental legal principles, in the light of their own experience and the altered conditions of the modern life is, in my opinion, perfectly justified". (P. 168)

Nominated ecclesiastical council of Ulama

Iqbal, under all circumstances, believed in the supremacy of the legislature and he did not tolerate the imposition of a separate ecclesiastical council of nominated Ulama over the Legislature. He strongly criticised the provision of such a committee in the 1906 constitution of Iran and declared:

"This, in my opinion, is dangerous arrangement"

(P. 174)

In his opinion, Ulama must form part of the Assembly and lead the way and take part in its deliberations. But he did not permit a council of Ulama to sit as a watchdog over the legislature.

Is the Parliament bound by the Unanimous decision of the Companions:

In the context of the authority of the legislature of a modern Islamic state to exercise the right of Ijtihad and to re-interpret Shariah Iqbal has raised a very sensitive question that is:

Is the legislature bound by old interpretations of Shariah and by the Ijtihad of the old Mujtahideen?

Iqbal's view in this matter is that the legislature is not so bound. Because, as stated earlier, the old Mujtahideen never claimed their Ijtihad being the last word.

In Iqbal's opinion, the thinking of the old Jurists has become out-of-date and such out-of-date thoughts can never become the source of renaissance and reawakening of a people and in support he quotes the following:

"The verdict of history is that worn-out ideas have never risen to power among a people who have worn them out". (Reconstruction, p. 151)

In his opinion the old Ijtihads are no longer valid. The need of the time is, that by the help of the modern thought and experience and exercising the right of fresh Ijtihad, a restructuring of the Law of Shariah should be carried out. He has quoted Turkey's Saeed Halim Pasha in this respect and fully agreed with him to quote:

"The only alternative open to us is to tear off from Islam the hard crust, which has immobilized an essentially dynamic outlook on life, and to rediscover the original verities of freedom, equality and solidarity with a view to rebuild our moral, social and political ideals out of their original simplicity and universality". (Reconstruction, p. 156)

Iqbal believes that those Ijtihads that have become lifeless due to having been worn out, the modern legislature cannot be bound by them, nor the show of any

false reverence towards them or resurrecting them by artificial means provide the cure for a declining community:

"Thus a false reverence for past history and its artificial resurrection constitute no remedy for a people's decay".

(Reconstruction, p.151)

The above quoted thoughts of Iqbal have made it abundantly clear that he considers the legislature to be a completely independent and autonomous body and he believes in the right to interpret the Shariah. He thinks that the legislature is above the schools of Fiqh. He is not prepared to tolerate the supremacy of any one school of Fiqh over the Parliament.

Is the Legislature bound by the decisions of the Companions

While discussing the powers of the legislature with respect to interpretation of the Shariah , Iqbal has raised a very sensitive question i.e. Are the coming generations of the Muslims bound by any Consensus of the Companions of the Holy Prophet? He asks:

"But supposing the Companions have unanimously decided a certain point, the further question is whether later generations are bound by their decision?

(Reconstruction, p. 175)

After discussing views of Imam Shawkani on this subject Iqbal presents a fundamental principle regarding the distinction between the consensus of the Companions on a question of fact and the consensus on a question of Law and says:

"I think it is necessary in this connection to discriminate between a decision relating to a question of fact and the one relating to a question of Law"

(Reconstruction, p. 175)

And he further explains this principle thus:

"In the former case, as for instance, when the question arose whether the two small Suras known as "Muavazatain" formed part of the Quran or not, and the Companions decided unanimously that they did, we are bound by their decision. Obviously, because the Companions alone were in a position to know the fact".

And after this, Iqbal gives an example of the other question, the case of a question of Law:

"In the latter case the question is one of interpretation only, and I venture to think , on the authority of Karkhi, that the later generations were not bound by the decisions of the Companions.

"Says Karkhi: The Sunnah of the Companions is binding in matters which cannot be cleared by Qiyas, but it is not so in matters which can be established by Qiyas".

(Reconstruction, p. 175)

The Parliament has complete authority in legislation

According to the terminology of Fiqh, the Parliament possesses the authority of Ijtihad-e-Mutlaq (the absolute Ijtihad), thinks Iqbal and his words are:

"In this paper I am concerned with the first degree of Ijtihad only, i.e. complete authority in legislation".

(Reconstruction, p. 149)

In the terminology of Fiqh, the first degree of Ijtihad is called Ijtihad-e-Mutlaq and one who exercises such Ijtihad is called a Mujtahid-e-Mutlaq. He determines himself the principles of Ijtihad and its rules and regulations, and is not bound by the principles and rules of others before him.

One who follows the principles of others before him, is called a Mujtahid-e-Muntasib and is ranked as a second degree Mujtahid. He is bound to carry out Ijtihad

according to the rules laid down by his predecessor whom he has accepted as the Mujtahid-e-Mutlaq.

Iqbal as a Mujtahid-e-Mutlaq advocates "the first degree of Ijtihad". He himself laid down the rules and principles for carrying out Ijtihad and explained them at length. The discussion he had made on the Quran, Hadith, Ijma' and Qiyas, is very enlightening and it throws light on his principles of Ijtihad that he has enunciated.

Iqbal also believes in individual Ijtihad, so that the learned Ulama and men of understanding and insight could help the elected representatives of the people. But he holds that the authority of collective Ijtihad to interpret Shariah and to legislate accordingly vests only with the Parliament having the authority.

Therefore, according to Iqbal, the Parliament of a modern Islamic state has the authority to exercise the Ijtihad-e-Mutlaq i.e. the first degree of Ijtihad.

The above discussions lead us to the conclusion that Iqbal conceived the idea of an independent modern Islamic state and inspired a historical movement for this achievement, and for this inspiration he used his poetic talents to create a rousing message of hope and confidence for the Muslim people, and to the legislature of the new Islamic state, he gave the right of Absolute Ijtihad and even laid down the ground rules and principles of Ijtihad, for the interpretation of Shariah.

Therefore, it is the primary duty of the parliament of Pakistan that it should, in the light of the principles laid down by Allama Iqbal, their benefactor, exercise the authority of absolute Ijtihad (Ijtihad-e-Mutlaq).

Duty of the Pakistani Nation

It is essential that the people of Pakistan should realize the efforts of their guide and recognize his services, by virtue of whose thought and imagination, they have been

blessed with the honoured and respectable right to be the citizens of a modern Islamic state. To pay homage to such a great benefactor, they must give shape to a parliament that can measure upto the principles of Ijtihad as laid down by Iqbal so that it can, by the help of new thoughts and insights, formulate a new Fiqh that can wipe out sectarian differences, regional, linguistic, provincial prejudices, and can eliminate social and economical contradictions, so that Pakistan can rise to be a solid modern Islamic state, wherein there is abundance of justice and equity, and wherein the principles of equality of social, economic and political status should reign supreme and so that the Pakistani nation, founded on "Holding tight to the rope of Allah", may become a living picture of the Quranic simile of "A lead-filled wall".

Why were the thoughts of Iqbal not put into practice

We have still to answer the question, fully, as to why were Iqbal's thoughts, on the construction and design of a modern Islamic state ignored? Although his thought contain vast material on these matters. Some of the reasons have been stated in the introductory remarks, of this paper.

Another reason was this, Iqbal had, due to his Islamic insight, even before partition felt the rancour and malice of the Hindu Brahman mind against the Muslims and Islam, and as a result of which he had put forward the demand for a separate Muslim State.

History bears witness that some of the Muslims openly opposed the idea of Pakistan and some, by remaining spectators, added power to the efforts of the enemy. The process of history happened to be in favour of the concept of Pakistan and therefore, in spite of their opposition and silent spectatorship, Pakistan Movement took shape and resulted in the establishment of Pakistan. The historical, national and political need after the establishment of the

state was that the drafting of its constitution, formation of its institutions, and the shape of the social and economical systems should have been along the lines laid down by Iqbal.

But it is a sad coincidence, rather, an irony of history of that period, that those who opposed the movement of the idea of Pakistan and had lost their political struggle against Iqbal and against Pakistan, succeeded in suppressing Iqbal's thoughts and defeating them after the establishment of Pakistan and during the structuring of the state. So what they could not get during the achievement of Pakistan, they got during the construction of Pakistan.

One of the primary principles of justice is that no body should be punished before giving him a hearing, but what type of justice is being done to the thought of Iqbal, that without trying it out, it is being rejected.

Is it just that aspersions and doubts be cast on the RATIONALE for the creation of Pakistan.

Is it fair, that instead of giving an institutional shape to Iqbal's concept of brotherhood, the infighting between the Sindhis, Baluchis, Punjabis, Pathans and Muhajirs is being termed a bitter fruit of the tree of Pakistan?

Is it fair that instead of enforcing Iqbal's principles of social equality and eliminating Feudalism and Capitalism, to hang the present class war and struggle between the poor and the rich round his neck?

Is it fair that, instead of giving birth to a truly democratic order as per his precepts, the allegation of a totalitarian dictatorship is being imposed on him?

It's a fact of history that not one of his principles of Fraternity, Equality and Liberty was put into effect. The bitter fact is that his political opponents have forceably taken possession of the Land of Iqbal, who have evaporated his poetic thoughts on Fraternity, Equality and

Liberty through the Radio and T.V. waves. The land went to the opposition and the air waves went to Iqbal.

Iqbal is the creator of the idea of Pakistan, its soil needs fertilization with the seed of his ideas. No idea can germinate in vacuum, it needs ground in which to grow and take shape and prosper.

Isn't it a great injustice to Iqbal that his songs and poems are used to liven up the atmosphere by means of Radio and T.V. waves, and doubts should be cast that they are dead and lifeless.

This is height of ingratitude on part of the Pakistani people to their great benefactor, and the sin of ungratefulness has brought in its wake the chastisement of Provincialism, Lingualism, Regionalism, Poverty, Ignorance and Disease.

The only way out now is that the nation must atone for the sin of ungratefulness and apologize with deeds. And put to use his thoughts and precepts regarding the construction of a modern Islamic state so that whatever had remained of the original Pakistan can be strengthened and perpetuated.

His thoughts are full of so much potential and vigour that they can still transform the broken Pakistan into a strong and well-founded Islamic state.

The devotees of Iqbal must rid themselves of the defeatist mentality of the opposition, those who opposed the Pakistan Movement.

If we can recapture the same spirit and fervour as was seen during the Pakistan Movement days then, there is no reason why then we should not succeed in the work of reconstruction of Pakistan like we succeeded in the work of achievement of Pakistan.

The fact is that just as in the days of the Pakistan Movement the greatest danger was from the quarrellings from within our own ranks, as it is now.

We should now gird up our loins and start on the road to reconstructing Pakistan into a modern Islamic state.

Chapter II

Ijtihad and Parliament

The creation of Pakistan is a commendable event of history of Islam of which we have every reason to be proud. Those who took part in its creation are the true benefactors of the Muslims of this sub-continent .

The part played by Allama Iqbal in bringing about this great event of world's history and giving the idea of Pakistan a practical shape, could be rightly termed the work of a Mujaddid and Mujtahid. Some people may object to the use of these terms of Mujaddid and Mujtahid with respect to Iqbal, they are welcome to object but the objection must be raised in an academic and research-oriented manner.

"Difference of opinion of my Ummah is a blessing" is a well-known Hadith, but if the right to disagree is used as a prop to false allegations, incitement, taunting and belittlement, by the adversary, such person loses respect in the eyes of scholarly society of today, whilst the person who is made the victim of such vituperation gains sympathy of scholarly and scientific-minded people. The people after weighing the two viewpoints in the scale of scholarly and scientific analysis, accept the view which is based upon scholarship, analysis and observation and reject the mud-slinger's vituperations.

Only God knows what is in the heart and a person who presumes ill-intention from others, decides his own fate. Some people have done this to me. But let us see whether the feat accomplished by Iqbal was really that of a

Mujaddid and Mujtahid, or have I tried artificially to increase his stature, as has been alleged?

His Ijtihad in the matter of "The Reconstruction of Religious Thought in Islam":

Some people may well ask what great feat Iqbal has accomplished that he should be termed as a Mujtahid-e-Mutlaq? Simpler answer to this is that he carried out the reconstruction of Islamic thought and this is the work of a Mujtahid and a Mujaddid.

He laid down the guiding principles for the constitution of a great modern Islamic state: laid down the rules for Ijtihad and Istinbat in the modern age: by carrying out Ijtihad himself, he showed the desirability of establishing a modern Islamic state: prepared the plan of action for the achievement of such a state, as a result of which a great Islamic state by the name of Pakistan came into existence.

In the entire history of Islam, Iqbal is the only Mujtahid whose Ijtihad led to the establishment of an Islamic state. No other Mujtahid could touch these heights.

May be the above brief answer does not satisfy some people especially those who are used to using the term Ijtihad in the old conventional sense, and are not familiar with the importance of creative thoughts and views it might be difficult for them to understand the terms of the modern times.

For instance, let us look at Iqbal how he has used the term in a modern sense. He has used this term for the decision of the Turks that:

"Khilafat or Imamat can be transferred from a single person to body of elected representatives".

He has made a new use of the old term Ijtihad as follows:

"Turkey's Ijtihad is"

Although it is an historical fact that above decision of Turkey was a political decision and was not an Ijtihad in a conventional sense as used to be performed by the old Mujtahids, but since it was the decision of a modern Islamic state taken after due consideration of teachings of Islam, modern knowledge and to solve the problem, the use of the term Ijtihad was justified in this case.

Those people who do not believe in the Islamic system of elected Government, would certainly feel that this use of the term Ijtihad is inappropriate, but in the modern times, when a person of the stature of Iqbal, after considering different aspects of a problem, be in social, political, judicial, economic, agricultural or from any other field, in light of the Quran and the Sunnah, comes to a decision, it would be in the fitness of things to call it Ijtihad.

The earlier Fuqaha, when they used to form an opinion in the light of the Quran and the Sunnah on matters of Jihad, Spoils of war, sons or daughters from a slave girl, authority of Sultan or Imam, submission of the subjects it was called their Ijtihad. In the present time, the struggle against exploitation, the legislation regarding formation of a modern Islamic state, civil liberties, the rule of law, are the pertinent and relevant issues and when any thinker after due deliberation in the light of the Quran and the Sunnah forms an opinion, it will be called the Ijtihad.

Those people who have only studied the poetry of Iqbal especially that part of his poetry that was written for the Muslim awakening on a world-wide basis for the Pakistan movement, may be right in saying that Iqbal was neither a Mujaddid nor a Mujtahid, because they have not studied that part of his prose that is concerned with the construction of an Islamic state and wherein he has stated the principles of Islamic concepts regarding the society,

the Economy and the Politics, nor have they gone through his prose in which he has thrown light on the Islamic Judiciary, Legislature and the Executive.

The other disability of these people is that they have not given any weight to the writings of Iqbal on these topics in prose.

The main reason for this neglect is that the part of Iqbal's writing connected with the foundation of a modern Islamic state is in English. Added to this is the difficulty that Iqbal's English is of the highest literary style and is full of modern terms of Theology, Philosophy, Physics, Jurisprudence, Law, Science and Technology. It is cast in the style of modern research and highest standards of lingual expression. Therefore, a person who has only studied English to pass the examination, cannot be conversant with Iqbal's Ijtihadat as contained in these writings. Although his writings in English have been translated, but, unfortunately, the translation is not in every day language nor is it commonly available.

Although millions of rupees have been spent on Iqbal's name, yet no government or non-government institution has so far been blessed with the capacity to publish an easy-to-understand translation of his lectures. His Ijtihads are also contained in his letters which he had written to his contemporaries, both in English and Urdu.

These have not been so far compiled on a topic-wise basis. Therefore from the point of view of Ijtihad and Istinbat, those that have not seen this part of his writings may well claim that Iqbal never performed any Ijtihad. For they have no access to this treasure of knowledge.

Due to these factors, some can say that Iqbal made no mentionable contribution to Ijtihad and they may also say that anyone who claims such feats from Iqbal is culpable of mis-statement of facts. However, this exposes their ignorance of the actual state of affairs.

The biggest source of his Ijtihad is his English book "The Reconstruction of Religious Thought in Islam", which has been translated into Urdu by Mr. Nazeer Niazi. In this book, Iqbal has stated his views, Ijtihads and thoughts in an extremely organised, logical and orderly fashion. This is book of English prose, and when one writes in prose, the thoughts and views expressed therein are the result of cool-headed thinking carried out in an organised, logical and coherent fashion. These thoughts are not written, like poetry, as a result of instant impressions of the environment, nor do they reflect the passions of the moment rather, they are result of deep study, adult and mature thought, historical perspective, scientific analysis, modern knowledge, personal observation and are based on the national and historical demands. They are formulated with specific goals and for attaining far reaching effects and results. Let us study the historical back-drop to Iqbal's Ijtihads. But before we do that I would like to mention that although Iqbal had made a reference to Ijtihad and the principles of Ijtihad in the above mentioned book, he had planned to write a detailed and comprehensive book on "The Reconstruction of Jurisprudence in Islam" he had prepared an outline and given it to Mian Muhammad Shafi (Meem Sheen) so that he could later dictate the book to Mian Sahib. This project called "The Outlines for the Reconstruction of Fiqh in Islam" has been published by the Iqbal Academy due to Mr. B.A. Dar's efforts. Those who are in doubt about Ijtihad being a strong point of Iqbal (i.e. his being a Mujtahid) should study his book "Reconstruction of Religious Thought in Islam" and the outline of the book on Fiqh. I am sure their doubt will be converted to belief.

So, let us now study the national requirements which caused Iqbal to carry out Ijtihad:

The end of the Ottoman Caliphate after the First World War was a great and important event of the history

of Islam. This event profoundly affected the thinking of Muslim Intelligentsia. Iqbal also was deeply moved by this event and gave it a great deal of thought. Finally, he came to the conclusion that the time has now come that Monarchy should end as a form of government in the Muslim World and that it should give way to the democratic order, which was more consonant with the spirit of Islam. To quote;

"Turkey's Ijtihad is that according to the spirit of Islam the Caliphate or Imamatus can be vested in a body of persons, or an elected assembly". He further adds:

"Personally, I believe the Turkish view is perfectly sound. It is hardly necessary to argue this point. The republican form of government is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forces that are set free in the world of Islam". (p.157)

The problem of the form of government is one of the most important problems of the modern age, in the previous ages, the Fiqh did not attach much importance to it and if we do find some discussion on this topic, it is in favour of the monarchical system. All our books of Fiqh contain a basic principle that the power of deciding all the important issues lies with the Imam or the King. There is no concept of an independent, just and impartially elected government in the books of Fiqh. The matter always ends with the power being conferred on the king or the Monarch. Although Islam has no room for the monarchical system of government.

Under these circumstances, if someone brings into action his creative thinking power and expresses an opinion on the form of government after due consideration of the teachings of the Quran and the Sunnah this opinion, according to the principles of Fiqh, is an Ijtihad.

Since Iqbal, after a deep study of Islamic disciplines, has declared the Republican form of government as being according to the spirit of Islam, this act will be called an Ijtihad and he shall be called a Mujtahid.

If the Mujtahids of the past, who declared the monarchical system to be in accordance with the spirit of Islam, could be called Mujtahids, then why a man who claims the republican form of government in accordance with the spirit of Islam, cannot be termed a Mujtahid?

Is it because he is for a democratic form of government and against a monarchical form?

The other big problem facing the Allama was:

On what principles and lines should the constitution of a modern Islamic state be framed?

Consequently, he kept on pondering over this question during the decade of the twenties. As a result of his thinking, he produced an outline draft on this question in 1924, and after further thought, research and revision, he prepared a final, comprehensive and orderly draft, which he presented to Intelligentsia of the Muslims of the sub-continent as the Madras Lectures.

These very lectures have been published in English under the name of "Reconstruction of Religious Thought in Islam". In these he has reconstructed the Islamic disciplines of knowledge and religious thoughts, and discussed those topics that may confront a modern Islamic state. Ground rules for the formation of a modern legislature have been laid down. Rules and regulations have been laid down for the process of the interpretation of the Shariah.

Since the previous Fuqaha were never faced with the problems that beset a modern Islamic state, and concept of an elected legislature did not exist in the monarchical period, therefore the Mujtahideen of those days never

bothered to lay down the rules nor given the detailed outline of a collective Ijtihad. This question concerned the elected legislature of a democratic order, and since the previous Mujtahideen had never a democratic order, therefore it is pointless to look for guidance on this question in the old Fiqh.

This was the demand in view of which Iqbal framed the rules for the framing of a constitution of a modern Islamic state and performed Ijtihad in the matter of giving right of interpretation of the Shariah to the elected national legislature.

Ijtihad in the matter of attaining an Islamic state

After his-Reconstruction of Religious Thought in Islam- The guiding principles for the constitution of a modern Islamic state- A new interpretation of the Fiqh and the Shariah the matter of attainment of an independent Islamic state became paramount in Iqbal's mind. 'Till such time that he had not formulated his creative and juristic thought in an organised and orderly fashion, the question of attainment of an Islamic state had not gained much intensity in his mind. But when the guiding principles of constitution-making had been laid down, he had no option but to give utmost importance to the struggle for an independent Islamic state. This was the demand of the time that made him put forward his Ijtihad in the form of Allahabad Address in the great gathering of Indian Muslims in 1930 session of the Muslim League. In this address, he very clearly and categorically stressed on the setting up of an Islamic state and outlined a plan of action for the attainment of this objective and urged the Muslims to struggle for the attainment of this objective. He believed in the correctness of his Ijtihad and that is why he recalled the great Muslim leader, Quaid-e-Azam, from London and entrusted the leadership of the Pakistan Movement to him.

It was thus that Iqbal, after having formulated the guiding principles for the constitution of a modern Islamic state, and after giving shape to the principles for interpretation of the Shariah by the legislature of modern Islamic state, and after handing over the leadership of the Pakistan Movement to the Quaid and the Muslim League, said goodbye to this ephemeral world. The Quaid and the Muslim League fulfilled the mission entrusted to them with great sincerity.

For the purpose of giving a concrete shape to this concept, they convened a historical and important session of the Muslim League in Lahore in 1940, in which the Lahore Resolution was passed. After the passage of this resolution, the Pakistan Movement gained great strength and finally, in 1947, Pakistan came into being. In the perspective of the history of Islam, it was Iqbal's considered opinion that brought into being the largest Muslim state, released millions of Muslims from colonial bondage and slavery and raised their status in the international sphere. This independent reasoning and considered opinion can certainly be termed as Ijtihad.

If the minor matter of slave-girl and a slave can form the subject of Ijtihad, then the major achievement of independence of millions of Muslims can certainly be classified as Ijtihad, in fact Ijtihad of a much higher order, Ijtihad Mutlaq.

The Pakistan-wide movement for the Enforcement of Shariah that is going on now, this movement has become possible because an independent Islamic state exists wherein such a movement could be launched, otherwise in the neighbouring country, Bharat, nobody can dare to launch such a movement. They are even finding it difficult to practise the Muslim personal law. Even their places of worship are not safe.

Whilst discussing the topic of "The Authority of Interpretation of Shariat in Pakistan" we have stated the background of Pakistan Movement at some length, so that we can clarify as to who would and should have the right to interpret the Shariat. The above detail of Pakistan Movement shows clearly that this right vests in a duly elected legislature. The other thing that it clarifies is that in this state the Shariah will be interpreted in the light of those principles which have been formulated by Iqbal. This point needs further consideration and explanation. Iqbal had formulated the constitution of a modern Islamic state and the guiding principles for legislation before the establishment of the state and then he put forward an outline for the action plan for attainment of this state. This clearly shows that logically the state that would come into being as per his concepts and views, will be guided by his principles of interpretation of the Shariah and legislation, principles that he had formulated before the birth of the state. If this premise is historically correct, and it is certainly correct, then honesty demands that these principles should be enforced in Pakistan. When the Quaid and the Muslim League fulfilled their commitment with Iqbal and brought into existence, with Allah's help, a state based on his concepts, why should'nt we now enforce his concepts about the right of interpretation of Shariah and reconstruction of Islamic Fiqh in the state that was primarily conceived as an experimental ground for the testing of his principles?

History bears witness that some people had opposed his two major Ijtihads i.e. the need for a new interpretation of the Shariah and the idea of Pakistan. There was very strong opposition to his Ijtihad about interpretation of Shariah and he was made the target of "Fatwas of Kufr" and declared him outside the pale of Islam. Similarly, his Ijtihad about the need to establish Pakistan came under heavy fire. The question then arose who should decide on

the correctness or otherwise of Iqbal's Ijtihads? It was a difficult question because both parties, Iqbal and his detractors, were basing their arguments on the Quran and the Sunnah. Finally, the dispute was left to the insight and conscience of the Muslim Ummah. The Ummah showed great strength of faith and justice and equity in that they gave a clear verdict in favour of Iqbal's Ijtihad and declared the Ijtihad of his opponents as based on error. This verdict of the Ummah was accepted by millions of Muslims. What greater proof there could be of Iqbal being a Mujtahid. In fact, the Pakistan Movement could be called "A New Interpretation Of the Shariah". Those who were opposed to the idea of Pakistan used to interpret Shariah in their own way and Iqbal made his own rules for the interpretation of Shariah. The support and opposition to the idea of Pakistan was nothing but the support and opposition to these two conflicting views of Shariah.

According to the interpretation put forward by Iqbal and the Quaid, Islam demanded from us that we launch a movement for separate homeland for the Muslims, whilst the opponents declared that Islam did not demand from us the attainment of a separate homeland. When these two contradictory interpretations of Shariah were put to vote before the Ummah living in the sub-continent, it wholeheartedly endorsed Iqbal's interpretation and rejected the opponents view.

After this clear and unambiguous verdict of the Muslim Ummah, it would be in the fitness of things and honesty demands it from us, that we let the legislature, the judiciary and the executive of this country function according to his thoughts and views. The interpretation of the Shariah should be done according to the rules of Ijtihad and Istinbat laid down by him. We should define Shariah in its true and original meaning as enunciated by Iqbal in his Lectures.

Even Iqbal's Ijtihad that the right of interpretation of Shariah belongs to the Parliament was objected to on the grounds that:

"The conditions laid down in the previous Fiqh for Ijtihad are impossible to fulfil in the modern times".

Iqbal's rejoinder was that these impossible conditions had no sanction behind them. Ijtihad is an ever-present need of the Ummah and cannot be postponed. Also, that may be these conditions are not met by any individual, but these are certainly present in the entire nation. That's why he gave the right of Ijtihad-e-Mutlaq to the Parliament elected by the entire nation. Parliament is composed of persons of varying talents and capabilities and their combined knowledge and experience is certainly more than any Mujtahid, however great.

When the right of interpretation of the Shariah is given to the Parliament, then the people will realize their responsibility in the matter of electing such competent persons who can satisfactorily shoulder this responsibility.

Thus the insistence on the old conditions of Ijtihad, which are impossible to attain, does not agree with the Collective Ijtihad Principle.

In the modern times, the style of Interpretation of the Shariah has undergone a change. In the monarchical period, the Ummah had been deprived of the right of Collective Legislation. Just a handful of Fuqaha and Kings used to agree to Ijtihad amongst themselves. In the present democratic era, this is not possible; in this era the entire nation takes part in this process. Undoubtedly, the legislative work is done by the Parliament, but when a "Bill" is introduced in it, the entire nation along with its elected representatives takes part in it. The experts and the laymen express their views about it: the information media provide many avenues for thoroughly thrashing out the issues and thus in a way, everyone is taking part in the interpretation

of the Shariah. A cursory glance over the Rules of Procedure of the Parliament will explain how the total and entire legal and juristic expertise and wisdom is applied and exercised by the legal experts of the Parliament and the Ministry of Justice and Parliamentary Affairs. Only the ignorant will ignore the exhaustive and thorough efforts of the Collective Ijtihad of these institutions.

The Shariah Bill is a case in point: which facet of this issue remains undiscussed? The Parliament has taken assistance from the view of all and sundry and fundamental teachings of the Quran and the Sunnah have been examined on this issue from all angles.

All this goes to show that the impossible conditions for Ijtihad as laid down by the previous Fuqaha have lost their importance in the modern perspective. These are a legacy of the days when the monarchs and kings had deprived the people of their right of interpretation of the Shariah. Now that monarchy is no more, its trappings should also be discarded. When all the experts, the Fuqaha, the judges, the teachers the entire intelligentsia are exerting themselves over a problem, is their knowledge and experience not enough to perform interpretation of the Shariah?

When the right of interpretation of the Shariah is given to the Parliament, it does not mean that only the members carry out the interpretation. It means a participation in the process by the entire nation for the discussions and debates that take place publicly over any issue, profoundly affects the deliberation of the Parliament and no Parliament can ignore the public opinion on an issue. Thus the collective thinking of the entire nation eventually takes the shape of a law.

This entire process is called "The Right of Interpretation of the Shariah".

If God forbid, the nation, inspite of the capabilities of its elected representatives and its individuals, goes astray and remains misguided, then there is no excuse for the existence of such a community.

In view of the paramount position of the legislature, Iqbal opposed any nominated institution for the purpose of dealing with legislation or interpreting the Shariah. The basic reason for Iqbal's opposition is that the nominated persons cannot go against the will and wishes of the nominator. Obviously every nominator would have his personal view and thoughts on issues and thus the nominated persons tend to become "His Master's Voice". This arrangement then would be against the collective interest and religious objectives of the nation. Especially so if the right of interpretation of the Shariah is given to such nominated persons. In that case the "Deen" and Shariah come under their personal views. In such institutions there is no chance for the entire nation to take part in the deliberations, unlike the parliament, where the entire nation, directly or indirectly, is involved in the deliberations.

If we view this question in the above perspective, Iqbal's Ijtihad seems to be based on correct foundations. i.e. Ijtihad in which he has opposed the supremacy of a nominated religious advisory council over the elected parliament. If Iqbal had been alive today, he would certainly have opposed the supremacy of the Federal Shariat Court over the parliament, because the court is a nominated institution and hence comes under Iqbal's ruling i.e. the ruling that he gave against the supremacy of the religious advisory council.

Thus, according to Iqbal, the Federal Shariat Court cannot be empowered to rule whether a particular law is according to or against the tenets of Islam. This right either vests in the parliament or in case of a specific question it

could be delegated to the supreme court, which is a properly constituted court.

The representative institution of the country must remain completely autonomous and to impose any other institution over it would not be a step in the right direction.

The Pakistan Parliament is a trustee of Iqbal's views and thoughts, for it owes its very existence to Iqbal's thoughts. It is Parliament's national, moral and historical duty that it should not forget its benefactor.

It should carry out a new interpretation of the Shariah according to the principles laid down by him for this purpose.

In this context it is a matter of great importance and urgency that the Pakistan Government should constitute a high level commission for the purpose of putting together Iqbal's and Quaid's views and Ijtihads regarding the framework of a modern Islamic state. In the light of its recommendations the Government should introduce a bill in the Parliament dealing with all the matters that are confronting Pakistan as a modern Islamic state.

It is hoped that if such a commission exerts itself honestly and sincerely to compile Iqbal's and Quaid's thoughts and these are then put into effect, Pakistan will become an exemplary modern Islamic state.

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